TABLE OF CONTENTS

	Page
Opinions Below	1
Statement of the Grounds on Which the Jurisdiction of This Court Is Invoked	1
Questions Presented For Review	2
Constitutional Provisions Involved	3
Statement of Facts	3
The Federal Questions	5
Certificate of Service	14
Exhibit A	15
Exhibit B	26
Exhibit C	33
Exhibit D	34

TABLE OF AUTHORITIES

	Page
Article VII, Sections 10 and 29 of the Louisiana Constitution	2, 3, 13
Fourteenth Amendment of the Constitution of the United States	2, 3, 4, 9, 10, 12
28 USC 1257(3)	2

IN THE
SUPREME COURT OF THE UNITED STATES

No. _____

HARRISON J. CHERAMIE, JR.,
Plaintiff-Appellee,

versus

STATE OF LOUISIANA,
Defendant-Appellant

PETITION FOR WRIT OF REVIEW AND OR CERTIORARI TO REVIEW THE DECISION OF THE FIRST CIRCUIT COURT OF APPEAL OF LOUISIANA AND THE DENIAL OF WRITS OF THE LOUISIANA SUPREME COURT

OPINIONS BELOW

District Court - Appendix A

Court of Appeal - Appendix B

Denial of Rehearing by Court of Appeal - Appendix C

Denials of writs by Louisiana Supreme Court - Appendix D

STATEMENT OF THE GROUNDS ON WHICH THE JURISDICTION OF THIS COURT IS INVOKED

On 29 May 1972, the First Circuit Court of Appeal of Louisiana reversed the trial court's judgment of 7 December 1971 on the credibility of one witness. On 26 June 1972, the Court of Appeal refused rehearing and on 22 September 1972,

the Louisiana Supreme Court refused to grant a writ of certiorari or review "based on the facts as found by the Court of Appeal."

By this action, applicant draws in question the validity of Article VII, Sections 10 and 29 of the Louisiana Constitution on the grounds that they are repugnant to the Fourteenth Amendment of the Constitution of the United States. 28 USC 1257(3) confers jurisdiction on this court to review the decision of the Louisiana Supreme Court and Court of Appeal which relied on these sections of the State Constitution which violated applicant's constitutional right to a fair trial.

QUESTIONS PRESENTED FOR REVIEW

1. Does the Louisiana Constitution Article VII, Sections 10 and 29 which allows the Courts of Appeal to substitute their findings of fact for the trial court's findings of fact and grants authority to the Courts of Appeal to reverse and render on the facts alone without another trial, violate applicant's right to a fair trial under the Due Process Clause of the Fourteenth Amendment of the United States Constitution?

2. Does the Louisiana Constitution Article VII, Sections 10 and 29 which allows the Courts of Appeal to substitute their findings of fact for the trial court's findings of fact and grants authority to the Courts of Appeal to reverse and render on the facts alone without another trial, violate applicant's right to a fair trial under the Equal Protection of the Laws Clause of the Fourteenth Amendment of the United States Constitution?

3. Does the Louisiana Constitution Article VII, Sections 10 and 29 which allows the Courts of Appeal to substitute their findings of fact for the trial court's findings of fact and grants authority to the Courts of Appeals to reverse and

render on the facts alone without another trial, take away a litigant's property without due process of law as prohibited by the Fourteenth Amendment of the United States Constitution?

CONSTITUTIONAL PROVISIONS INVOLVED

The validity of Article VII, Sections 10 and 29 of the Louisiana Constitution is involved (Volume 2, West's LSA Constitution, pp. 48 and 281, a true copy). The text of these sections are as follows:

Article 7, Section 10:

> **Civil and probate appeals.** In all civil and probate cases where the Supreme Court is given appellate jurisdiction, the appeal shall be both upon the law and the facts.

Article 7, Section 29:

> The Courts of Appeal, except as otherwise provided in this Constitution, shall have appellate jurisdiction only, which jurisdiction shall extend to all cases, civil and probate, of which the Civil District Court for the Parish of Orleans, or the District Courts throughout the State, have exclusive original jurisdiction, regardless of the amount involved, or concurrent jurisdiction exceeding one hundred dollars, exclusive of interest, and of which the Supreme Court is not given jurisdiction, except as otherwise provided in this Constitution, and all appeals shall be both upon the law and the facts.

STATEMENT OF FACTS

Plaintiff, Harrison J. Cheramie, Jr., swerved his vehicle to avoid an intersectional collision with Ronald Lloyd; his vehicle overturned and he was rendered quadriplegic. Plaintiff's lane of traffic had the right of way and the intersecting

road that Lloyd was on was supposed to be controlled by a stop sign and a flashing red light. Plaintiff sued the State of Louisiana through its Department of Highways because, as was proven at trial, the light was not working and the stop sign was obscured from vision having been placed behind two poles. The trial judge found that Lloyd had proceeded into the intersection because he was not warned to stop for traffic in plaintiff's lane, and that the defendant was responsible for the lack of that warning. The trial judge awarded plaintiff $1,211,453.88 plus interest and costs. The Court of Appeal reversed on the facts. The Supreme Court found no error of law based on the facts **as found by** the Court of Appeal.

The Court of Appeal concluded that the crucial factual question was whether Lloyd actually saw the partially hidden stop sign. It felt that he **did** see the sign and merely disobeyed it. The Court of Appeal thereby expressly overruled the crucial factual finding by the trial court, that Lloyd **did not** see the sign.

It is apparent that this one crucial issue under the trial court's finding makes the defendant liable, and under the Court of Appeal's findings makes the defendant not liable.

The trial court also found that the flashing red light, by itself or in combination with the stop sign, would have provided Lloyd adequate warning to stop and therefore that the State had been negligent for not maintaining it for the previous two years. The Court of Appeal expressly refused to place significance on this factual finding and the Louisiana Supreme Court refused to grant plaintiff a writ of certiorari.

Plaintiff, Mr. Cheramie, contends that the Court of Appeal in substituting its findings of fact for the trial court's findings of fact denied him due process and the equal protection of the laws under the Fourteenth Amendment of the

United States Constitution as it took away his property ($1,211,453.88) without finding any error because the Court of Appeal chose to believe one witness without even seeing or hearing that witness testify.

THE FEDERAL QUESTIONS

The constitutional questions arose when the Court of Appeal overruled the trial court's findings of fact. This was brought to the attention of the Court of Appeal on application for rehearing, which was refused.

To grant a trial to decide a case of controversy is to determine its outcome according to due process of law and fairness. A trial involves a factual analysis by direct and cross examinations of witnesses to determine truth and the application of the proper law. This process of legal determination allows the fact finder to best decide a witness' credibility and to be able to determine the proper weight to be applied to the witnss' testimony. This method of fact finding is due process of law. To deny the parties involved in the trial this method of fact finding is to deny them due process of law in violation of the Fourteenth Amendment. The Courts of Appeal in Louisiana and **only** in Louisiana **state courts** and only in **civil** cases in Louisiana state courts take this process of fact finding away from the trial judge and in effect can negate the entire effect and purpose of direct and cross examinations of witnesses and negate the basic purpose of a trial itself. The Court of Appeal should not be a fact finding tribunal but a tribunal that reviews errors that caused prejudice which may have denied a litigant a fair trial or due process of law or the equal protection of the laws. Nowhere in the opinion of the Court of Appeal is mentioned any such error. In fact, the Louisiana Supreme Court denied writs based on the **NEW FACTS** "as found by the Court of Appeal" because the Louisiana Supreme Court found "no error of law."

Louisiana Courts of Appeal should not be allowed to substitute their judgments for those of trial courts with reference to veracity or truthfulness of witnesses. The Courts of Appeal in Louisiana simply disagree with the findings of the trial court and change these findings to suit themselves without ever remanding the case for another trial. Louisiana Courts of Appeal have supposedly created a rule of self restraint that only factual findings that are "manifestly erroneous" should be changed, but this manifest error rule has been the subject of widely differing court interpretations (and misinterpretations), many of which hold that the rule permits complete substitution of facts as the appellate courts see fit. In the federal system a finding of "clearly erroneous" by a federal appeals court allows a reversal, but the matter is retried. Only in a Louisiana state court in a civil case is it **REVERSED** and **RENDERED.** The Supreme Court of Louisiana cannot substitute its findings of fact for the trial court in a criminal case in Louisiana.

Under the constitutional right to a fair trial, the Courts of Appeal do not have the power to review the facts because the trial court is the only court that has listened to witnesses, watched their manner of talk, observed their coolness or nervousness on the stand, seen how they react to various questions or other witnesses, and how they reacted if impeached and discredited during cross examination. In fact, Ronald Lloyd was proven to have falsely testified on two occasions in the trial, which may have accounted for the trial judge's disbelief in his crucial testimony that he saw the stop sign. The Court of Appeal chose to believe Ronald Lloyd without having seen or heard him or experienced the mental impact of seeing him impeached on cross examination. The Court of Appeal is constitutionally bound to accept the factual findings of the trier of fact and decide whether an error of law or procedural error has been committed and whether the matter should be retried: it should not summarily reverse and render.

It emasculates the trial courts completely for the courts of appeal to substitute its findings of fact for the trial court who saw and heard the witnesses and who had the advantage of demeanor evidence.

The written word is not so revealing with reference to **truth** as the spoken word. Judges of the courts of appeal in Louisiana at times have voiced the opinion that the written record is more revealing of the truth and the credibility of witnesses than actually looking at a witness. Louisiana Court of Appeal judges have been heard to say that some people can lie so well that they look like they are telling the truth. We know this is true. This is the reason, or one of the reasons, why the polygraph test is not admitted into evidence.

If a person does not believe that when he tells a lie that it is wrong, he becomes so accustomed to lying that it does not upset him to lie. He can then lie his way through a polygraph test. The polygraph test will have a false reading because it will show that he is telling the truth.

Yet, with all of this, these same judges, we submit, when it comes down to **something really important to them** would want to face the person who is making the allegation to determine truthfulness. If a person wants to find out the truth of something **really important to him**, he would want to watch the person he is interrogating. He would want to see how that person reacts to the questions - not necessarily what the answers are. Perhaps the reactions to the questions are more important than the answers themselves, because the reactions to the questions might tell the truth more so than the actual answers. That is why the written word is not as good as the **confrontation.**

If a parent wanted to find out or question his teenager about some activities, surely the parent wouldn't write a

letter to the teenager and ask him to answer the letter or write down an account of his activities, nor would the parent call him on the phone and ask him to give an account of his activities. The parent would **confront** him at a time perhaps when he thinks he will not be confronted, then the parent would ask him questions and watch his reactions. From his reactions to the questions, the parent would make up his mind whether or not his child is telling the truth.

If for instance a wife was to think that her husband was running around with her best friend and having an affair, surely she wouldn't call him at the office and ask him if he is having an affair with Mary, nor would she drop him a note and ask him to write down his responses as to whether or not he is having an affair with Mary. She would wait until an opportune time when he has had a good day at the office and he comes home and has his best supper and has sat down and is about ready to watch his favorite TV show, where she waits on him hand and foot, where he thinks that nothing in the world is wrong and everything is right and beautiful. All of a sudden while he is in this frame of mind she turns to him and **stares him in the eyes** and asks him the direct question, "Are you having an affair with Mary?" She knows that when she asks this question that his answer in all probability (regardless of the truth of the answer) will be "No", but she wants to watch his reactions, she wants to see if he drops his drink, if he scratches, if the blood drains from his face, if he lights his cigarette, if his eyes dalaite, if he mumbles, if the tone of his voice is not as it normally is, if he coughs, if he screams, if he yells, if he can't look at her, if he can look at her, if he is upset by it or not upset by it, if he comes back with a cutting question to her in answer to that question or if he casually answers the question, or if he remains silent, etc., etc. There are a thousand and one things she will look at and she is going to make the decision as to whether or not

this husband has told her the truth, based on his reactions — probably a very small part of the decision will be based on the answer given. If this were transcribed, the person reading the record might actually come to a completely different conclusion. The record would show that "he said no" and therefore he was not running around with Mary (and if the wife thought otherwise, then she was "manifestly erroneous").

Who can be sure that a witness is telling the truth? Can the Court of Appeal be that sure that Ronald Lloyd really saw the stop sign that he says he saw? Can the Court of Appeal be so sure that he really did see the stop sign in view of the three eye witnesses to the contrary? If so, then why didn't he stop? He was unfamiliar with this area.

Can the Court of Appeal be so sure that it can say that the trial court, which saw and observed Lloyd and observed these other witnesses, was so far out in left field that it was guilty of committing manifest error for disbelieving Ronald Lloyd?

If the trial court's findings are to be taken so lightly, then the trial judge is reduced to being a minor official who merely oversees the recording of evidence in a case so that the real "trial" can be held by some judges who will read about what went on.

Louisiana stands alone as the only state out of the 50 United States of America to allow its appellate courts to reverse the judgments of its trial courts on facts alone by the mere disagreement of the appellate court with the findings of the lower court and this can only be done in **civil trials** - not in criminal trials and not in civil or criminal trials in a federal court in Louisiana.

This is a violation of the Equal Protection Clause of the Fourteenth Amendment.

AMENDMENT XIV.

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Had Mr. Cheramie's accident occurred within the jurisdiction of any of the district courts of the other 49 states or within the jurisdiction of the federal district court of any of the 50 United States, the judgment rendered by the trial court would not be subject to being reversed and rendered simply because of the interpretation (or misinterpretation) of the facts from the transcript by judges who neither saw nor heard the witnesses testify, as was done in this case. In the federal system the federal appellate court must find that the ruling of the trial court was clearly erroneous — and then the case is retried. The same is generally true in the other 49 states. Louisiana is the only jurisdiction in the civilized world where appellate courts review the facts and can substitute their findings of fact and can render a final judgment . . . without a remand for a trial free of error.

Had Mr. Cheramie been a citizen of any state except Louisiana, he would have been entitled to a trial under the diversity jurisdiction of the federal district courts in Louisiana on this cause of action. The judgment rendered herein, had it been by a federal district judge, would not be subject to reversal on the facts alone, unless the appellate court found that it was clearly erroneous. Even in that event, if reversed because of error, Mr. Cheramie would still be entitled to a

new trial free of error. If his case were tried in any of the other 49 states his judgment would not be subject to reversal on findings of fact alone by the appellate court. Therefore, for the State of Louisiana to allow such arbitrary and summary reversal of judgments on facts alone, is to deny Mr. Cheramie the basic right of the equal protection of the laws available in **all other states** of the Union (both in state and federal courts) and, indeed, even in the United States District Courts **in Louisiana** and to all other citizens in Louisiana, except Louisiana citizens.

In the courts of all other states of the Unon and the federal courts, litigants are entitled to a fair trial in which they can **confront** and **cross examine** and **impeach** witnesses before the trier of fact. To allow Louisiana's Courts of Appeal to substitute their findings of fact for the trial court's findings of fact and to reverse on facts alone from the transcript, amounts to the granting of a trial **"de novo"** and **"in abstentia"** where litigants **are not allowed** to confront or even cross examine the witnesses before the "trier of fact" (Court of Appeal judges). If we are going to have this trial de novo, it should at least be a real new trial, and not just a "paper trial."

Had Mr. Cheramie been a citizen of any state except Louisiana he would not have to suffer the indignity and expense and lack of finality of trying his case once without error only to have it retried behind closed doors on the paper record alone and changed and ended. Any judgment rendered by any other court of the land, state or federal, and Louisiana federal courts, would not be subject to such arbitrary and summary reversal on an appellate court's findings of fact alone unless it were "clearly erroneous", and even then, HE WOULD BE GRANTED A GENUINE **AND FAIR** NEW TRIAL. Mr. Cheramie, therefore, and all citizens who petition the courts of the State of Louisiana, are denied a FAIR TRIAL,

a right common to all other citizens of the United States by this unfair Louisiana appellate procedure. This is a denial of the equal protection of the laws clause of the Fourteenth Amendment, since the Fourteenth Amendment demands **fundamental fairness.**

Had Mr. Cheramie been a citizen of any state except Louisiana he would have been able to still try his case in Louisiana, **but** in a federal court with the same Louisiana substantive law applying and no higher court in this land could reverse and render on the facts or substitute its findings of fact for the trial court's findings of fact. Isn't it ironic that Louisiana law in a federal forum in Louisiana gives more rights to a non Louisiana citizen than a Louisiana citizen in a Louisiana court. Had Mr. Cheramie been a non Louisiana citizen, he would have used a federal forum and would still have his million dollar judgment. This is discriminatory and not equal protection of the laws and is enforced by state action.

The other 49 states do not allow appellate review of facts nor does the federal system, because to allow it violates the Due Process Clause of the Fourteenth Amendment.

Plaintiff-petitioner submits that the practice of the Louisiana Courts of Appeal as set forth above denys him due process and the equal protection of the laws. Petitioner submits that due process allows every citizen of the United States to litigate his complaints in a court of law and have them fairly decided at all levels of the process. Plaintiff submits that the American way of trying cases is sacred.

What is found upon trial shall not be changed without a finding of error **and** without a new trial free of error.

Plaintiff's judgment, obtained by him through due pro-

cess, was his property which was taken away from him without due process by the application of Article VII, Sections 10 and 29 of the Louisiana Constitution.

Mr. Cheramie, therefore, petitions this court as the court of last resort to reinstate his judgment. The Louisiana Court of Appeal found no error of law in the decision of the trial judge, or error in the proceedings in the trial court, but only referred to the credibility of one witness as "error." The Louisiana Supreme Court refused writs based "on the facts found by the Court of Appeal we find no error of law in its judgment." It is therefore proper for this court to reverse and reinstate the judgment of the trial court and Mr. Cheramie so prays.

Respectfully Submitted:

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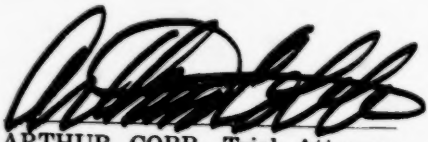
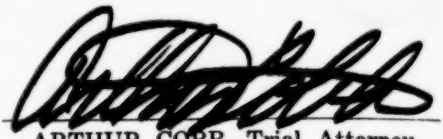
BY: 
ARTHUR COBB, Trial Attorney

CERTIFICATE OF SERVICE

I certify that two copies of this application for writs has been mailed to Mr. Charles William Roberts and Honorable William J. Guste, Attorney General, on the 19th day of December, 1972.



ARTHUR COBB, Trial Attorney
for Plaintiff

EXHIBIT A

NOTICE OF ORDER OF JUDGMENT IN COMPLIANCE WITH LOUISIANA REVISED STATUTES OF 1950 13:2346

Re: HARRISON J. CHERAMIE, JR. No. 130,070 Civil Docket "C"

VS

19th JUDICIAL DISTRICT COURT
PARISH OF EAST BATON ROUGE
STATE OF LOUISIANA

STATE OF LOUISIANA

To Messrs: Arthur Cobb and Charles Wm. Roberts, Attorneys

GREETING:

You are hereby notified that a decision was rendered and spread on the minutes of Civil Docket "C" on the 7th day of December, 19 71 in the above entitled and numbered cause, and the following is a true copy of the entry of said decision:

For written reasons this day assigned, judgment is rendered in favor of plaintiff, Harrison J. Cheramie, Jr., and against the defendant, State of Louisiana, in the sum of $361,453.88 for total special damages and the sum of $850,000.00 for pain and suffering and permanent disability, past, present and future. Judgment will be signed accordingly.

( ) Oral decision

(X) Written decision, a copy of which is enclosed herewith.

filed

Thus done, signed and mailed/at Baton Rouge, Louisiana,

on this 7th day of December 19 71

Camille Romano
Deputy Clerk of Court

HARRISON J. CHERAMIE, JR.	:	NUMBER 130,070 DIVISION "C"
	:	
	:	19TH JUDICIAL DISTRICT COURT
VERSUS	:	
	:	PARISH OF EAST BATON ROUGE
	:	
STATE OF LOUISIANA	:	STATE OF LOUISIANA

WRITTEN REASONS FOR JUDGMENT

This tort action came before the Court for trial on December 8, 1969 and on February 12, 1970. The plaintiff was severely and critically injured when he swerved his truck off the roadway to avoid hitting an automobile operated by Ronald Lloyd.

On March 4, 1967, at 4:30 P. M., Harrison J. Cheramie, Jr. was traveling in a southerly direction on Louisiana Highway 308 at approximately 40 to 45 miles per hour. He was driving a van truck which he used in connection with the operation of his laundry business. He was headed to the junction of Louisiana Highway 308 and the Cote Blanche Bridge. In that area Highway 308 generally follows the bayou. As he approached the junction of Highway 308 with the Cote Blanche Bridge, a 1964 Ford owned by Chester Lloyd and being operated by Ronald Lloyd crossed the Cote Blanche Bridge and failed to stop for traffic on Highway 308. Mr. Cheramie's vehicle turned over and he received injuries which caused him to become a quadriplegic.

The intersection had an inoperative flashing red light and a stop sign which was partially obscured by the bridge railing. Both the stop sign and the red light were directed toward traffic crossing the bridge attempting to enter Highway 308. The testimony showed that the State of Louisiana, Department of Highways, through its employees, was aware of the fact that the light was inoperative. As plaintiff approached the junction of Highway 308 with the Cote Blanche Bridge the vehicle driven by Lloyd suddenly

pulled into his path. Plaintiff was forced to choose between striking the other vehicle or causing his vehicle to leave the roadway in an effort to try to swerve and miss the automobile. He chose the latter, which at the time seemed the proper course. Unfortunately, when his van hit a small ditch adjacent to the roadway it turned over and plaintiff received the resultant injuries.

The Court finds that Mr. Cheramie was free of negligence. Although Lloyd, the other driver, testified that Cheramie's vehicle was moving at an excessive rate of speed, the Court disregards his testimony and believes the testimony of Cheramie and the other witnesses that Cheramie was traveling well under the speed limit at a reasonable rate.

The Court further finds that Ronald Lloyd was negligent in the maner in which he operated his motor vehicle. Although Lloyd testified that he crossed the Cote Blanche Bridge at a low rate of speed and st pped for the stop sign before entering Highway 308, attempting to turn left and travel in a northerly direction, the evidence, as this Court finds the facts, is to the contrary. Lloyd testified that he saw the stop sign when he was over halfway back towards the middle of the bridge. The evidence shows that it was impossible to see the sign until one is within 27 feet of the sign. This was because the sign was obscured by the railing of the bridge. Lloyd confessed his lack of familiarity with the intersection. He could not have seen the stop sign when he said he did. The evidence indicated that he was traveling across the bridge too fast and did not stop.

The Court concludes that the stop sign was not clearly visible for 250 feet as it should have been, that it was not properly placed, and that it was not properly maintained. The Court further finds that the Department of Highways is responsible

for the placement of the stop sign and breached its duty to the traveling public by not placing the stop sign in the proper place where it could have been seen. The Court further finds that the stop sign was placed in violation of the Department's own regulations, which state: "All locations for signs should be so selected that there is no obstruction to the line of sight between the sign and a point in adjacent lane of the pavement at least 250 feet in the direction of approaching cars."

The Court concludes from the testimony that the blinker light at the intersection was not working at the time of the accident, that it had been out a long time and that defendant had adequate notice at least 2 years before the accident that the light was out and failed to take reasonable steps to replace the flashing red light. The Court was very impressed with Trooper Guidry's testimony. He was frank and honest in testifying. The Court believes him to have been very sincere and thanks him for his cooperation in being the court's interpretator when Mrs. Danos testified.

From this the Court concludes that the Department of Highways is responsible for the inoperative flashing red light whether it was an unauthorized or authorized light.

The Court feels that the Highway Department had two duties regarding these traffic control devices. First, it should have maintained the flashing red light or removed it if it was unauthorized or unnecessary. R. S. 32:236. Even if the Highway Department did not put the flashing light up, it was their responsibility to maintain it, repair it, or removed it if unauthorized. Second, it should have had the stop sign located where it was clearly visible to those using the bridge approaching the intersection. Their regulations require that such signs be visible for at least 250 feet. Here the evidence showed the sign only

visible within 27 feet. Louisiana Department of Highways, Traffic and Planning Section; Louisiana Manual on Uniform Traffic Control Devices, Part 1. The breach of these two duties by their failure to properly maintain the signals created a foreseeable and unreasonable risk to traffic entering the intersection. Traffic control devices should warn drivers unfamiliar with the area of hazardous conditions. The combination of a flashing red light and a stop sign have a strong psychological impact on a great majority of drivers, even those who are reckless. Whether both the red light and stop sign were needed is amply demonstrated by the accident itself. However, whether, as the State urges, the stop sign alone was sufficient is not controlling because the Court finds as a matter of fact that the stop sign was so obscured as to be completely ineffective.

"Negligence is conduct which creates an unreasonable risk of harm or injury to others, the failure to use such care as is necessary to avoid danger which should and could have been anticipated." Spiers v. Consolidated Companies, 241 La. 1012, 132 So2d. 879; Larned v. Wallace, La. App. 3 Cir., 146 So2d. 434; 2 Harper & James, Law of Torts (1956), Sections 16.1 (p. 896), 16.9 (p.928); Prosser on Torts (2nd Ed. 1955), Section 30 (p. 119), 35 (p. 165); 2 Restatement of Torts (First), Section 282. Vidrine v. General Fire and Casualty, 168 So2d. 449, 453 (3rd Cir. 1964).

Consequently, this Court finds that the Highway Department was negligent in its failure to properly maintain and erect the two traffic control devices in question.

The issue then becomes whether or not the State of Louisiana through the Department of Highways is legally responsible to plaintiff for its negligence in view of Lloyd's negligence.

In Dixie Drive It Yourself v. American Beverage Co., 137

So2d. 298 at 305, the Supreme Court of Louisiana quoted the following from 38 AmJur, Negligence, Section 167, p. 841:

> "The general principle is that the violation of a statute or ordinance is not rendered remote as the cause of an injury by the intervention of another agency if the occurrence of the accident, in the manner in which it happened, was the very thing which the statute or ordinance was intended to prevent."

The Court goes on to say "There is no universal formula for the determination of legal cause . . . . It is clear that more than one legally responsible cause can, and frequently does, contribute to a vehicular collision. Negligent conduct is a cause in fact of harm if it was a substantial factor in bringing about that harm." 137 So2d. at 302. The Highway Department's negligent failure to properly erect and maintain the flashing light and stop sign and Lloyd's negligent operation of his vehicle joined to cause Cheramie's damage. In this Court's opinion Lloyd's negligence does not relieve the Highway Department of liability. "The mere possibility that the accident would have occurred despite the required precautions does not break the chain of causation." Dixie, Supra. at 304. "The inattention or confusion of motor vehicle drivers is not a highly extraordinary occurrence." Dixie, Supra. at 305-306. This approach taken in Dixie was reaffirmed by the Supreme Court in Pierre v. Allstate Insurance Company, 242 So2d. 821.

As Judge (now Justice) Tate wrote in Vidrine v. General Fire and Casualty, 168 So2d. 449 (3rd Cir. 1964), ". . . . a governmental authority charged with maintaining traffic control signals may be held liable for the negligent failure of its officers and employees to maintain such signals in proper working order. 40 C.J.S. Highways, Section 262 at p. 311; 60 C.J.S. Motor Vehicles, Section 176 at p. 518." 168 So2d. at 453. Thus, the

State of Louisiana, Department of Highways, must be cast in judgment for its negligence which was a proximate cause of the accident and resulting injuries to Harrison J. Cheramie, Jr.

In Vidrine, Supra, Judge Tate quote from the Dixie Drive It Yourself decision as follows:

> "As the opinion notes, the mere fact that injury also results from subsequent negligence of a careless or confused motorist does not insulate the first wrongdoer from liability to innocent victims, on a contention that the prior negligence is 'passive. The doctrine of passive negligence as stated in some of our jurisprudence 'places undue emphasis on the chronology of the negligent acts and omissions.' 137 So2d. 298. Where the purpose of a statutory or other duty is to safeguard the passage of vehicular traffic, the essence of the inquiry of proximate causation is whether the risk and harm encountered by the injured person fall within the scope of the intended purpose of the duty." 137 So2d. 304-305.

In Pierre v. Allstate Insurance Company, 242 So2d. 821 (1970), the Supreme Court of Louisiana was faced with a case strikingly similar to its earlier decision of Dixie Drive It Yourself v. American Beverage Co., Supra. In Pierre plaintiff brought his car to a stop to the rear of a parked and unattended car (defendant's car) which was left on the roadway blocking plaintiff's lane of travel. Subsequently a dump truck and its inattentive driver plowed into the rear of plaintiff's car, hurled him out of his car and ran over him killing him. Reaffirming the new policy it espoused in Dixie Drive It Yourself, the court held that the defendant's negligence was not merely a "remote" cause of the accident -- his negligence indeed set the stage for the accident because it created the precise risk of harm which subsequently was perfected into a needless traffic fatality which was entirely foreseeable.

The court stated:

> "Where causation in fact is a breach of a duty imposed to protect from the particular risk involved and this breach is an act negligent

per se, the mere fact that there is a later and intervening negligent actor who helped to create the particular risk involved will not absolve the first negligent actor from responsibility."

It further stated:

"The keys for the solution of the issue of responsibility when there is more than one cause-in-fact of damages are (1) a determination of the exact risk or risks anticipated by imposition of the legal duty which has been breached and, (2) the legal or policy considerations which grant excuses from certain consequences which follow an act of negligence. This requires, under the facts and the law of each case and the attendant exigencies, a jurisprudential determination which will implement and make effective our broad codal provisions concerning those who should respond in damages for their faults."

DAMAGES

This tragedy happened over four and a half years ago when the plaintiff was 32 years old. He is married and the father of three children. On the first day of trial in December, 1969, plaintiff and defendant stipulated that the past medical expenses as of that time were $31,474.88. The Court believes that Mr. Cheramie will probably live his normal life expectancy and that he will have tremendous future medical expenses. The Court finds that Mr. Cheramie has had and will have in the future recurrent expenses for daily medications of approximately $1,000 per year. He will also have expenses for surgical appliances such as hydraulic lifts, special beds, standing tables, braces and wheel chairs over his life expectancy. The Court believes that an award of $300 per year for these elements of damage would be proper.

Mr. Cheramie is completely helpless and needs someone to look after him. The Court was greatly impressed by Mrs. Cheramie in her honest, forthright and frank way of testifying and in her

love and devotion in caring for Mr. Cheramie. The Court believes that to allow Mr. Cheramie some assistance, if only the assistance of a practical nurse one-third of the day, would be of tremendous help, and, of course, a definite element of damage. The Court therefore feels that an award of $150,000 as estimated future (discounted) medical costs would be proper. It is very uncertain at this time whether or not Mr. Cheramie may continue to have various surgical procedures and hospitalizations throughout his lifetime.

The Court finds that Mr. Cheramie has a loss of wages of $10,000 per year; that he has lost $45,000 in past wages and will lose $10,000 per year for what would be the rest of his normal work life expectancy to age 65, or approximately 29 more years, or approximately $290,000. The Court believes that this figure should be discounted and the Court finds the discounted amount to be $134,979 for loss of future wages, or a total of $361,453.88 as total specials, past, present and future.

The Court was impressed with Mr. Cheramie's frankness and candor in court and believes that he is suffering a living death. The Court is of the opinion that this is the most tragic and horrible case that this Court has ever heard.

Mr. Cheramie is hopelessly quadriplegic with more than 90 percent of his spinal cord irreversibly and permanently severed. He will always be quadriplegic. For the pain and suffering, past, present and future, and for the permanent disability and residual disabilities and for his vegative existence, the Court awards judgment in favor of Mr. Cheramie and against the State of Louisiana, Department of Highways, in the total amount of $850,000. See Bush v. General Electric Corp., Nevada, Oct. 16, 1970, 13 ATL Newsletter 394-395, Nov. 1970; Talcott v. Holl, 224

So2d. 420 (1969) Florida; Davis v. Certified Life Ins. Co., Cal., May 13, 1971, No. 148431; Miller v. Chatham Board of Education, 7 NAACA Newsletter 219 (Aug. 1964); Ergas v. Barricini, 6 NAACA Newsletter 219, New York, Oct. 1963; Bleak v. City of Beverly Hills, 10 ATLA Newsletter 187, 219; Mason v. Waco Scaffold and Shoring Co., Florida, 18th Judicial Circuit, February 10, 1971, Brinegar v. San Ore Construction Co., 302 F. Supp. 630 (E. D. Ark. 1969); Beasley v. North Central Airlines, Illinois, Cook County Circuit, June 29, 1970, 13 ATL Newsletter 269.

Judgment is rendered in accordance with this opinion, and will be signed accordingly.

Baton Rouge, Louisiana, this 7th day of December, 1971.

JUDGE

FILED

DEC 7 1971

DEPUTY CLERK

NINETEENTH JUDICIAL DISTRICT COURT

PARISH OF EAST BATON ROUGE

STATE OF LOUISIANA

HARRISON J. CHERAMIE, JR.	:	NUMBER 130,070
VERSUS	:	NUMBER "C"
STATE OF LOUISIANA	:	JUDGMENT

This matter came on for trial on 8 December 1969 and 12 February 1970. Present in Court: Arthur Cobb and Max LaBranche, attorneys for plaintiff, and Charles William Roberts, attorney for defendant. The court, considering the law and the evidence to be in favor of plaintiff, for written reasons assigned:

IT IS ORDERED, ADJUDGED AND DECREED that there be judgment herein in favor of plaintiff, Harrison J. Cheramie, Jr., and against defendant, State of Louisiana, in the sum of $361,453.88 for total special damages and the sum of $850,000.00 for pain and suffering and permanent disability, past, present and future, with allowable interest and costs;

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the expert witness fee of Dr. Dean Echols is fixed at $100 and taxed as costs.

JUDGMENT RENDERED on 7 December 1971.

JUDGMENT READ AND SIGNED at Baton Rouge, Louisiana, on 9 December 1971.

Donovan W. Parker

JUDGE, 19TH JUDICIAL DISTRICT COURT

FILED

DEC 9 1971

Camille Romero

DEPUTY CLERK

I hereby certify that on this day a copy of the above judgment was mailed, postage prepaid, to Arthur A. Cobb

Done and signed on Dec. 9, 1971

Clerk Wm. Roberts

Camille Romero

Deputy Clerk of Court

EXHIBIT B

COURT OF APPEAL, FIRST CIRCUIT

STATE OF LOUISIANA

OFFICE OF CLERK

Baton Rouge, Louisiana

LAW OFFICES OF
ARTHUR COBB

1 JUN 1972

3101 DALRYMPLE DRIVE
BATON ROUGE, LA. 70802

Dear Sir:

Attached you will find copy of opinion in a case in which you are an attorney of record.

Your attention is invited to Rule XI of the Uniform Rules of the Courts of Appeal, especially to Section 1, which provides:

"Notice of judgments of the court will be given personally, or by certified or registered mail, by the clerk of court to at least one of counsel for each of the parties litigant; and applications for rehearing and briefs in support thereof must be filed in [redacted] copies on or before the fourteenth calendar day after, but not including, the date of receipt of such notice; and no extension of time therefor shall be granted."

HARRISON J. CHERAMIE, JR.

VS.

STATE OF LOUISIANA

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NO. 8884

APPEAL FROM THE NINETEENTH JUDICIAL DISTRICT COURT, PARISH OF EAST BATON ROUGE, HONORABLE DONOVAN W. PARKER, JUDGE PRESIDING

MAY 29 1972

BEFORE: LANDRY, BLANCHE AND TUCKER, JJ.

TUCKER, J.

The plaintiff, Harrison J. Cheramie, Jr., sued to recover damages for personal injuries, pain and suffering, residual impairment, medical expenses and loss of wages, arising from a vehicular accident, involving his 1965 model International panel truck and a 1964 model Ford car, owned by Chester Lloyd and being driven at the time by Ronald Lloyd. The accident occurred about 4:30 P.M. on March 4, 1967 at the intersection of a pontoon bridge and La. Rte. No. 308 in the Parish of Lafourche, on the north side of the town of Cut Off, La. The Lloyd vehicle traveled north on La. Rte. No. 1 on the west side of the bayou, then turned right, moving easterly across the bridge, preparatory to turning north on said La. No. 308.

Previous to the accident, Ronald Lloyd, accompanied by his father, Chester R. Lloyd, the owner of the Ford car, and Mr. and Mrs. Joe Wilson as passengers, had left their respective homes in Slidell, La. and driven south on State Rte. 1 on the west side of Bayou Lafourche to a restaurant which was a short distance south of the subject bridge. They were attracted to this place by a report that the oysters were good and inexpensive. After the group finished eating they started their trek back to Slidell, and apparently decided to proceed homeward on the east side of the bayou.

Ronald Lloyd, the operator of the Ford car, testified he saw what he recognized to be a stop sign warning traffic going easterly of the duty to stop when he was about the middle of the bridge. This structure was proved to be 220 feet in length. He also stated that the stop sign was partially obscured when he first saw it. The evidence is in conflict with respect to whether Lloyd came to a full and complete stop. Lloyd said he did so stop, and then attempted to move forward enough to avoid the impingement of his view north and south created by a utility pole. Other witnesses were just as certain that he did not come to a full stop. This is unimportant in view of the fact that Lloyd undisputedly drove the Ford car some distance into the plaintiff's lane of travel, thus substantially blocking Cheramie as he traveled south. In order to avoid a collision with the Ford car the plaintiff turned his panel truck to the left, drove over a small hump, and the truck turned over in the yard of a residence on the east side of Rte. No. 308. As a result of the accident plaintiff suffered grievous and grave physical injuries. He is paralyzed from the level of his shoulders down.

The trial court rendered judgment in favor of the plaintiff in the sum of $1,211,453.88 with legal interest and costs. From this judgment the defendant, State of Louisiana, has perfected this appeal.

The defendant contends here that the evidence does not show any act of commission or omission on the part of the Department of Highways, its adjunct, which had any causal connection with the accident.

The evidence justifies the determination of the trial court that the Lloyd vehicle did not come to a complete stop when the driver of same was confronted by the stop sign before reaching the intersection of the pontoon bridge and Rte. No. 308.

The lower court in rendering its judgment reasoned that Ronald Lloyd was incorrect in his testimony that he saw the stop sign apparently for the reason that it was so obscured by the utility pole or cross arm (then in an upright position) and used in the down position to warn motorists that the

bridge was open in order to accommodate bayou boat traffic). We do not agree with this crucial conclusion by the trial judge as we shall illustrate.

The plaintiff contends that not only was the defendant negligent in failing to properly maintain and position the stop sign, but, as well, there was a blinker or beacon light suspended over the subject intersection which had not been in operation for a substantial length of time previous to the accident with the actual or constructive knowledge of the Department of Highways that the light was not working. It was argued that the combination of these two factors indicted the defendant with actionable negligence which represented a cause in fact of the accident, and justified the judgment of the trial court. Plaintiff further points to the Department manual with respect to the duties imposed insofar as the maintenance of devices designed to warn the traveling public such as signs and "flashing beacons". These manual rules not only require such devices to be properly maintained so as to insure legibility and visibility, but state that a sign should be removed if no longer needed. In this regard it was stipulated that the blinker light fixture was installed by the Lafourche Parish Police Jury; that the Department never agreed to its installation, and had no record of the existence of the beacon light. Plaintiff urges the duty of the Department to remove or order the removal of unauthorized signs and other devices which are placed on highway property. Without doubt the Department had constructive knowledge of the inoperative beacon light.

The record shows that the stop sign was partially visible midway the bridge and wholly visible when a motorist on the bridge traveling east was 27 feet to the west of the sign. There was an added five feet of the bridge from the position of the sign to the eastern edge of the bridge and an additional 16 feet from that point to the west edge of the blacktop of Rte. 308. Consequently, Ronald Lloyd had a distance of 48 feet from the point on the bridge where he could see the complete stop sign until he reached the blacktop surface of the subject road. Of course, the precise point Lloyd had reached on the bridge, when he saw a sufficient portion of the sign to warn him that he should stop

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at the intersection, is not so definitely fixed, but no witness refuted Lloyd's estimate that he saw the sign when he had reached about the middle of the bridge, which would have been a point approximately 110 feet from the eastern edge of the bridge.

Plaintiff argues that Ronald Lloyd was unfamiliar with the bridge, having never traversed it previously. Nonetheless, Ronald Lloyd says he did see the stop sign as he was crossing the bridge. No one contradicted this portion of his testimony and that of his father, Chester R. Lloyd. It is true that he had never crossed the bridge previously, but he says his father informed him that there was a highway on the east side of the bridge.

Plaintiff claims that Lloyd's testimony that he saw the stop sign sufficiently in advance of the intersection to stop the Ford car is suspect and unbelievable. In accounting for this premise plaintiff's counsel theorizes that the Lloyds were not disinterested witnesses in that they were desirous of absolving Ronald Lloyd from any responsibility for the severe injuries experienced by Cheramie in the accident. We are unable to decipher this reasoning, for it appears that the converse thesis would hold true. Certainly, the admission on the part of Ronald Lloyd and his father that they saw the stop sign was not calculated to relieve any guilt feeling which might have been harbored by Ronald Lloyd as a result of the accident.

The law and cases cited by the plaintiff with respect to the duty of the Department to place signs in locations where they will serve the purposes for which signs are intended have no application here for the plain reason that the intervening pole or cross arm did not reduce Lloyd's view of the sign to such an extent that he was unable to discern that it was a stop sign. As a matter of fact the testimony of the other witnesses and the photographic evidence soundly corroborates Lloyd's testimony that he saw the stop sign in ample time to bring his car to a complete halt before the inter-

section, and in view of this the court finds that a reasonbly observant, prudent and careful motorist would have had no difficulty in seeing the essential and substantive part of the sign with the resultant recognition of his duty to stop at the intersection. The trial court was correct in its finding that Lloyd was negligent in entering the intersection at a time when it was not safe for him to do so, but the lower court committed manifest error in holding that the defendant was negligent, and that such negligence was a causative factor in the occurrence of the accident. It is recognized that a stop sign is distinctive both in color and shape.

The facts of McCallum v. State, 246 So. 2nd 46 (La. App. 3d Cir. 1971) have no relation to the factual situation posed here. In the cited case the plaintiff was injured because the state negligently failed to provide a barricade or suitable warning device for motorists traveling toward a T-intersection on which the road on which the such a motorist was traveling suddenly terminated.

No material significance is placed by a reasonable, careful and prudent motorist with respect to the manner in which he drives his vehicle when he is confronted by an inoperative blinker light. The inoperative status of the beacon light was not established to be a causative factor in this case, and no bearing on the occurrence of this accident can be attached to a dead blinker light, especially in view of our holding that the testimony of Lloyd that he saw the stop sign was uncontradicted and supported by the photographic evidence. Since Lloyd did not stop or maintain his stopped position for a sufficient length of time to permit Cheramie to clear the intersection, there is no justification for holding that Lloyd would have given credence to a working blinker light.

The evidence in the record clearly reflects that Ronald Lloyd had ample and sufficient time to stop at the subject intersection, traveling at a speed of 10 to 15 miles per hour, whether he recognized the traffic control as a stop sign when he was 110 feet west of the east end of the bridge when he said he did, or that his recognition did not come into fruition until

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he was 48 feet west from the western edge of the road blacktop.

The rule that the burden of proving his case rests upon the plaintiff is well accepted and does not require citation of authority. The plaintiff has fallen short of establishing his case.

The judgment of the trial court is reversed at plaintiff-appellee's costs.

REVERSED AND RENDERED.

EXHIBIT C

COURT OF APPEAL, FIRST CIRCUIT, STATE OF LOUISIANA

Harrison J. Cheramie, Jr. — No. 8884

Parish of East Baton Rouge

vs.

State of Louisiana

On application for rehearing.

Rehearing REFUSED

Baton Rouge, Louisiana, JUN 26 1972, 19

P. B. Chase, Jr.

C. Reuben Lewis

Judges

Filed JUN 26 1972, 19

Margaret B. Davis
Dy. Clerk

LAW OFFICES OF
ARTHUR COBB

27 JUN 1972

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EXHIBIT D

Supreme Court of Louisiana

NEW ORLEANS, 70112

HARRISON J. CHERAMIE, JR. — September 22, 1972

V.

STATE OF LOUISIANA — NO. 52,704

* * * * *

In re: Harrison J. Cheramie, Jr. applying for certiorari, or writ of review, to the Court of Appeal, First Circuit, Parish of East Baton Rouge.

* * * * *

Writ refused. On the facts found by the Court of Appeal we find no error of law in its judgment.

/s/ WBH

/s/ EHMcC

/s/ JWS

/s/ FWS

A TRUE COPY
Clerk's Office
Supreme Court of Louisiana
New Orleans
September 22, 1972

/s/ Andrew J. Falcon
Deputy Clerk

LAW OFFICES OF
ARTHUR COBB
25 SEP 1972

FILE COPY

No. 72-913

Supreme Court, U. S.
FILED
JAN 18 1973
MICHAEL RODAK, JR., CLERK

In the Supreme Court of the United States

HARRISON J. CHERAMIE, JR.,
Plaintiff-Appellee-Applicant,

v.

STATE OF LOUISIANA,
Defendant-Appellant-Respondent.

OPPOSITION TO APPLICATION FOR WRIT OF REVIEW OR CERTIORARI TO REVIEW THE DECISION OF THE FIRST CIRCUIT COURT OF APPEAL OF LOUISIANA AND THE DENIAL OF WRITS BY THE LOUISIANA SUPREME COURT

PHILIP K. JONES
D. ROSS BANISTER
NORMAN L. SISSON

BURTON & ROBERTS
Suite 102, Schwing Building
721 Government Street
Baton Rouge, Louisiana 70802

No. 72-913

In the Supreme Court of the United States

HARRISON J. CHERAMIE, JR.,
Plaintiff-Appellee-Applicant,

v.

STATE OF LOUISIANA,
Defendant-Appellant-Respondent.

OPPOSITION TO APPLICATION FOR WRIT OF REVIEW OR CERTIORARI TO REVIEW THE DECISION OF THE FIRST CIRCUIT COURT OF APPEAL OF LOUISIANA AND THE DENIAL OF WRITS BY THE LOUISIANA SUPREME COURT

May It Please the Court:

Statement of the Case

This is an ordinary tort suit in which the plaintiff complains of injuries which he received when he swerved to avoid another motorist at a "T" intersection, his vehicle left the road and he was seriously injured. The other motorist carried no liability insurance. Plaintiff's suit against the Highway Department of the State of Louisiana for alleged negligence

was tried before a Louisiana district judge, who awarded plaintiff a large money judgment.

Pursuant to the provisions of Article 7, Section 29 of the Louisiana Constitution, the case was appealed by the defendant to the First Circuit Court of Appeal of the State of Louisiana. That court concluded that "the lower court committed manifest error in holding that the defendant was negligent, and that such negligence was a causative factor in the occurrence of the accident." (Applicant's brief, Appendix, p. 31).

A rehearing was requested by plaintiff and was denied by an *en banc* panel of the First Circuit, consisting of the original three members of the appellate panel and two additional appellate judges. The vote to deny rehearing was unanimous.

Plaintiff then applied to the Louisiana Supreme Court for a writ of certiorari or review. In accordance with the procedures of that court, the application was presented in succession to each justice and when four had concurred in a denial, the application was denied. There were no dissents to the denial.

Plaintiff then presented this application, claiming as the basis for federal jurisdiction a denial of due process under the Fourteenth Amendment to the United States Constitution.

Argument

Plaintiff is in error in his opening statement to

the Court that the Court of Appeal reversed the trial court's judgment "on the credibility of one witness." In fact, there were two witnesses whose testimony was before the court on the "one crucial issue" (Applicant's brief, p. 4) which was finally decided against plaintiff. There was no contradictory evidence of any kind adduced on the issue by plaintiff.

It is axiomatic that the plaintiff has the burden of proving the assertions which he makes. Plaintiff's crucial assertion in this case was that the state was negligent in its placement of a stop sign at the "T" intersection *and* that the state's negligence was a proximate cause of his injury. The latter portion of the burden could only be fulfilled if plaintiff was successful in demonstrating that the other driver *failed to see* the allegedly misplaced stop sign. On this point, plaintiff adduced no evidence whatsoever. The only evidence on the point was offered by defendant, through the testimony of the other driver (Ronald Lloyd) and the sworn statement of his father, who was in the car. Both stated that they *saw* the stop sign and that Ronald Lloyd *stopped* before entering the intersection.

Not only is this clear evidence that any negligence of the state was *not* a proximate cause of plaintiff's injury, it is the *only* evidence in the record on an issue on which plaintiff had the burden of proof.

Under the circumstances, the appellate court made the only decision which it could properly make,

and plaintiff's assertion that the appellate decision rested on its opinion of the credibility of one witness is misleading. It is a matter of law, not fact, that plaintiff has the burden of proof, and the appellate court's conclusion is, based on the evidence which plaintiff presented, that "the plaintiff has fallen short of establishing his case." (Applicant's brief, p. 32). And it was manifest error for the trial judge to conclude that plaintiff had established his case, judging from the record that was presented. The appellate court clearly so indicated when it stated "the lower court committed manifest error in holding that the defendant was negligent, and that such negligence was a causative factor in the occurrence of the accident." It is hardly a denial of due process for an appellate court of three judges, a rehearing panel of five appellate judges, and a state supreme court to reverse unanimously manifest error of a trial judge, particularly on an issue on which plaintiff failed to discharge his burden of proof.

Undoubtedly, plaintiff strives to present this matter as one in which a single "fact" determination by a lower court was reversed out of hand by an appellate court so that he can make the argument to this Honorable Court that his federal constitutional rights have been violated. This is the only possible federal issue in this litigation and of course it is being raised for the first time in this application.

The very same issue was presented to this court in an even stronger setting less than three months

ago and decided adversely to plaintiff in the consolidated cases decided under the names *Mayes et al v. Ellis et al*, No. 71-1668 ——— U.S. ———, 93 S.Ct. 289, 34 L.Ed.2d 214 (1972), *Hill v. McKeithen*, No. 71-1684 ——— U.S. ———, 93 S.Ct. 290, 34 L.Ed.2d 214 (1972), *Davis v. McKeithen* (writ denied, January 8, 1973) and *Lewis v. Ford Motor Company* (writ denied, January 8, 1973).

These eight cases, all decided in Louisiana district court by juries, were reversed by Louisiana appellate courts, under the appellate review of fact and law authorized by Louisiana Constitution Article 7, Section 29. They were consolidated for argument before a three-judge federal court convened for that purpose under the name *Melancon v. McKeithen*. The opinion of that three-judge court is to be found at 345 F.Supp. 1029 (E.D. La. 1972).

The assertion in those cases was that the Fourteenth Amendment of the United States Constitution made the Seventh Amendment applicable to the states, and that accordingly it was unconstitutional to permit a fact "tried by a jury to be otherwise re-examined in any court of the United States, than according to the rules of the common law." In a lengthy and scholarly opinion, that contention was rejected by the three-judge court, which reasoned that the provisions of the Seventh Amendment are not so fundamental to the American scheme of justice as to constitute a necessary ingredient of due process.

In the present application, plaintiff cannot even claim that both the Seventh and the Fourteenth Amendment are apposite, since this was not a fact "tried by the jury" but rather by the judge alone. Thus, he is reduced to a Fourteenth Amendment "due process" argument which, of course, has already been rejected by this court in the consolidated cases discussed above. This application therefore presents absolutely nothing new for this Honorable Court to consider.

Plaintiff is understandably distressed that in the final analysis his suit was unsuccessful. But the fact remains that, in perfect accordance with the Louisiana constitution and the federal constitution, the original three-judge appellate court concluded that manifest error had been committed by the trial judge; the *en banc* panel of five appellate judges re-affirmed that ruling by refusing a rehearing; and the Louisiana Supreme Court without dissent refused plaintiff's petition for certiorari.

Plaintiff has been extended exhaustive "process of law" in this litigation and presents to this Honorable Court a weaker position on an issue already decided adversely to him not three months ago.

It is respectfully submitted that plaintiff's application for a writ of certiorari or review should be denied.

Respectfully submitted,

By Attorneys for the State of Louisiana, through the Department of Highways

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NORMAN L. SISSON

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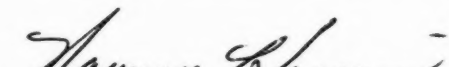
By: 
Norman L. Sisson

CERTIFICATE

I hereby certify that copies of the foregoing have this day been mailed by U. S. mail, postage prepaid, to Arthur Cobb, Esq., 3101 Dalrymple Drive, Baton Rouge, Louisiana 70802, of counsel for applicant.

Baton Rouge, Louisiana, this 12th day of January, 1973.

Norman L. Sisson